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*Attorneys for Defendant*  
*TRENT WEST*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

C&C JEWELRY MFG., INC.,

Plaintiff,

v.

TRENT WEST,

Defendant.

And Related Counterclaims

Case No. 3:09-cv-01303-JF(HRL)

~~PROPOSED~~ **STIPULATED  
PROTECTIVE ORDER**

**(MODIFIED BY THE COURT)**

For the purposes of pending litigation and to facilitate discovery between Plaintiff C&C Jewelry Mfg., Inc. (C&C) and Defendant Trent West ("West"), in Case No. 3:09-cv-01303-JF(HRL), and specifically to facilitate the discovery of any trade secrets, confidential research, development or commercial information or any otherwise sensitive business or technical information, the parties believe that such information should be produced under a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure. The parties agree that this Stipulated Protective Order is necessary in order to balance the need for confidentiality in litigation with the right of public access to judicial records.

The parties acknowledge that this Stipulated Protective Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to

1 treatment as confidential. The parties further acknowledge, as set forth in paragraph 8 below,  
2 that this Stipulated Protective Order creates no entitlement to file confidential information under  
3 seal. Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the  
4 standards that will be applied when a party seeks permission from the court to file material under  
5 seal.

6 Therefore, the undersigned parties through their attorneys hereby stipulate to, and  
7 petition the Court to enter, the following Stipulated Protective Order containing the following  
8 terms pertaining to the obligations of confidentiality regarding information that will be disclosed  
9 during discovery.

10 The Court, finding that the agreement of the undersigned parties is proper and desirable  
11 in the circumstances of this case, and good cause appearing therefor, pursuant to Rule 26(c) of  
12 the Federal Rules of Civil Procedure determines that for the benefit of all parties and witnesses  
13 to govern the course of the proceedings in this case

14 **IT IS HEREBY ORDERED THAT:**

15 **DEFINITIONS**

16 1. The following definitions shall apply to this Stipulated Protective Order (hereinafter  
17 "Order"):

18 (a) **"Party"** or **"Parties"** shall mean and refer to any party to this litigation,  
19 including the Plaintiff or C&C, and any cross-complainant or cross-defendant, in the above  
20 captioned action.

21 (b) **"Confidential Information"** shall mean and refer to any information,  
22 documents, testimony, things or other forms of data which are disclosed pursuant to discovery or  
23 in some other proceeding in this litigation and which a party or a non-party witness claims to be  
24 its trade secret or confidential research, development, financial or commercial information, or  
25 otherwise is claimed to be non-public, confidential or proprietary business or technical  
26 information within the meaning of Fed. R. Civ. P. 26(c) by the designating party. Such  
27 information must be designated "Confidential" in good faith by the party or non-party disclosing  
28 such information, whether such designation be oral at a hearing or deposition, or in writing, and

1 whether such disclosure be voluntary or otherwise made. The designation made by a party or  
2 non-party shall be a certification to the Court and to the other parties that such information is  
3 believed to be Confidential within the meaning of this Order. All involved in making such  
4 designation shall act in good faith, and such designation shall not be made to impose burden or  
5 delay on an opposing party, for tactical or other advantage in litigation, or in order to avoid  
6 embarrassment. Information designated as "Confidential" in accordance with this provision shall  
7 be treated as Confidential Information until it ceases to be covered by this Order.

8 (c) Unless otherwise ordered by the Court, "**Qualified Person(s) for receiving**  
9 **Confidential Information**" shall mean and refer to:

- 10 (i) Presently retained "counsel" for any party to this litigation, specifically  
11 the attorneys of King & Kelleher, LLP for West and the attorneys of Durie  
12 Tangri LLP. "Counsel" shall include the employees and staff of counsel,  
13 including paralegals, stenographic, secretarial or clerical employees,  
14 translators, and employees of an independent photocopying, microfilming,  
15 or similar service utilized by such counsel for any party in this action.  
16 Subsequently retained "Counsel" may be added by any party provided the  
17 other parties are provided with written notice that such counsel has been  
18 retained and the other parties have been provided with newly retained  
19 counsel's qualification to receive Confidential Information pursuant to  
20 order of the Court or the provisions of paragraphs 5 and 6 below. None  
21 of the parties retain in-house counsel, so "counsel" shall not include in-  
22 house counsel unless such counsel is added by a party and the other  
23 parties are provided with written notice that such counsel has been  
24 retained and agrees to abide by the terms of this Order;
- 25 (ii) Employees of the Court or other forum involved in any way in the action,  
26 including stenographic reporters engaged in such proceedings as are  
27 necessarily incident to the preparation for trial and/or the trial of this  
28 action and the conduct of discovery;

- 1 (iii) Mr. Trent West, as an individual party and one (1) additional officer,  
2 director, or other employee of Trent West or his corporate entities, and  
3 two (2) officers, directors, or other employees of each of the named party  
4 C&C who have been charged with responsibility for making business  
5 decisions on behalf of the party and dealing directly with the litigation of  
6 this action, provided these identified individuals have executed a Written  
7 Assurance statement and been qualified in accordance with the provisions  
8 of paragraphs 5 and 6 below and agree to abide by the terms of this Order.  
9 West and C&C agree that the parties' counsels will work together in good  
10 faith and will stipulate to permitting additional individuals access to  
11 Confidential Information as may be reasonably required, provided these  
12 identified individuals have executed a Written Assurance statement and  
13 have been qualified in accordance with the provisions of paragraphs 5 and  
14 6 below and agree to abide by the terms of this Order;
- 15 (iv) The deponent, party employee or other witness who authored, received, or  
16 saw a document or thing designated as "Confidential" or who is otherwise  
17 familiar with the Confidential Information, but only to the extent of the  
18 person's familiarity with the Confidential Information (provided that such  
19 person is not already a Qualified Person by virtue of some other provision  
20 of this Order);
- 21 (v) Independent/Outside Experts and Consultants retained for the purpose of  
22 pretrial discovery, preparation for trial, or trial of the action, or who have  
23 been otherwise requested by Counsel to furnish technical or expert  
24 services or to give testimony with respect to the subject matter for the trial  
25 of this action, as may hereafter be qualified to receive Confidential  
26 Information pursuant to order of the Court or the provisions of paragraphs  
27 5 and 6 below;  
28

(vi) Such other individuals as the parties may stipulate and agree to, provided such individuals have been qualified in accordance with the provisions of paragraphs 5 and 6 below.

(d) **"Confidential for Attorney's Eyes Only Information,"** which may also be designated as **"Attorney's Eyes Only Information"** or **"Outside Counsel's Eyes Only Information,"** shall mean and refer to information and data which constitutes confidential business or technical information which is considered in good faith by a disclosing party or non-party to be highly sensitive. This designation shall be made as sparingly as possible and shall be a certification to the Court and the other parties that such information is believed subject to this more restrictive classification within the meaning of this Order. All documents or information designated "Confidential for Attorney's Eyes Only," or "Attorneys' Eyes Only" or "Outside Counsel's Eyes Only" (which are considered one and the same in this Protective Order) are included within the meaning of "Confidential Information" as used in this Order and, except as otherwise provided herein, all provisions set forth in this Order applicable to "Confidential Information" also apply to documents or information designated "Confidential for Attorney's Eyes Only." Likewise, all provisions set forth in this Order applicable to Qualified Persons for receiving Confidential Information also apply to those persons designated as "Qualified Persons for Receiving Confidential for Attorney's Eyes Only Information," except that "Confidential for Attorney's Eyes Only" documents and information shall not be shown, disclosed, or communicated by the receiving party in any way to anyone other than those persons specifically described in paragraph 1(e) below. All involved in making this designation shall act in good faith in doing so, and information designated as "Confidential for Attorney's Eyes Only" in accordance with this provision shall be treated as such until it ceases to be covered by this Order or is lowered to a less restrictive classification.

(e) Unless otherwise ordered by the Court, **"Qualified Person(s) for Receiving Confidential for Attorney's Eyes Only Information"** or **"Outside Counsel's Eyes Only Information"** shall mean and refer to:

- 1 (i) Presently retained “counsel” for any party to this litigation, specifically  
2 the attorneys of King & Kelleher, LLP for West and the attorneys of Durie  
3 Tangri LLP. “Counsel” shall include the employees and staff of counsel,  
4 including paralegals, stenographic, secretarial or clerical employees,  
5 translators, and employees of an independent photocopying, microfilming,  
6 or similar service utilized by such counsel for any party in this action.  
7 Subsequently retained “Counsel” may be added by any party provided the  
8 other parties are provided with written notice that such counsel has been  
9 retained and the other parties have been provided with newly retained  
10 counsel’s qualification to receive Confidential Information pursuant to  
11 order of the Court or the provisions of paragraphs 5 and 6 below.  
12 “Counsel” for the purposes of this provision, notwithstanding any other  
13 provisions under this Protective Order, shall not include in-house counsel  
14 for C&C or Trent West, or Trent West himself;
- 15 (ii) Employees of the Court or other forum involved in any way in the action,  
16 including stenographic reporters engaged in such proceedings as are  
17 necessarily incident to the preparation for trial and/or the trial of this  
18 action and the conduct of discovery;
- 19 (iii) The deponent, party employee or other witness who authored, received, or  
20 saw a document or thing designated as “Confidential for Attorney’s Eyes  
21 Only” or who is otherwise familiar with the Confidential for Attorney’s  
22 Eyes Only Information, but only to the extent of the person’s familiarity  
23 with such information (provided that such person is not already a  
24 Qualified Person by virtue of some other provision of this Order); and
- 25 (iv) Independent Experts and Consultants retained for the purpose of pretrial  
26 discovery, preparation, and trial of the action as may hereafter be qualified  
27 to receive Confidential Information pursuant to order of the Court or the  
28 provisions of paragraphs 5 and 6 below;

(f) **Confidential Information and Confidential for Attorney's Eyes Only**

**Information shall not include** any information or materials which:

- (i) for the purposes of Confidential for Attorney's Eyes Only Information, are lawfully in the possession of the party receiving them such as, for example, materials in the receiving party's possession prior to being designated Confidential Information in this litigation or received through communications other than production or disclosure in this action, such as, for example, materials received in the course of legitimate business dealings between the parties or between one of the parties and a third party, unless those documents are covered by a separate non-disclosure or confidentiality agreement or order, in which case the receiving party may continue to use such documents in the course of business subject to those agreements or orders;
- (ii) have been or become part of the public domain by publication or otherwise, which is not due to any unauthorized act or omission on the part of the receiving party; or
- (iii) have been or are lawfully obtained by the receiving party from a person or entity lawfully possessing and having the right to disclose such materials to the public.

(g) **"Action"** shall mean this legal proceeding, Case No. 3:09-cv-01303-JF(HRL).

(h) **"Disclosing, Designating or Producing Party"** shall mean the party or a third party producing Confidential or Confidential for Attorney's Eyes Only Information designated under the provisions of this Order or who designates a Qualified Person for receiving Confidential or Confidential for Attorney's Eyes Only Information under the provisions of this Order.

(i) **"Receiving Party"** shall mean the party or a third party who receives Confidential or Confidential for Attorney's Eyes Only Information designated under the provisions of this Order by a disclosing, designating or producing party.

(j) “**Objecting Party**” shall mean the party or a third party who objects to designation of Confidential or Confidential for Attorney’s Eyes Only Information by a disclosing, designating or producing party under this Order or who objects to the designation of a Qualified Person for Receiving Confidential or Confidential for Attorney’s Eyes Only Information under the provisions of this Order by a designating party.

## **STIPULATION AND ORDER**

2. Prerequisites for Receiving Information: Prior to receiving Confidential Information or Confidential for Attorney's Eyes Only Information, all Qualified Persons, except those designated in paragraphs 1(c)(i), (ii) and (iv) and 1(e)(i), (ii) and (iii), shall sign a Written Assurance Statement, in substantially the form set forth in paragraph 5(f) below, indicating that the person has read this Order and agrees to abide by its provisions. Copies of such signed Written Assurance statements shall be promptly provided to the other parties, as set forth in paragraph 5 below, along with a written request asking that such person be designated as the appropriate "Qualified Person" for the purposes of receiving Confidential or Confidential for Attorney's Eyes Only Information and informing the other parties of the persons name, present employer and the persons title, position and employment duties. In the case of an expert or consultant which a party intends to employ for rendering an expert report or testimony, or otherwise providing professional, scientific or other litigation related advice and consultation, a copy of the expert or consultant’s resume shall also be provided to the other parties, or, in lieu thereof, a description of the person’s experience and education which is pertinent to his or her anticipated testimony.

3. Designation: Confidential Information and Confidential for Attorney's Eyes Only Information shall be used only in connection with discovery and proceedings in this action, and any appeals therefrom, and may be disclosed only to an appropriate Qualified Persons for receiving Confidential or Confidential for Attorney's Eyes Only Information as set forth in paragraphs 1(c) and 1(e) above. Any document or thing designated as "Confidential Information", or "Confidential for Attorney's Eyes Only Information," as well as the material and/or data contained therein, shall remain confidential in accordance with the protections



1 afforded by this Stipulated Protective Order and shall not be revealed or used, other than as set  
2 forth herein, for any other purpose whatsoever.

3 (a) A party or non-party may designate information produced as "Confidential" by  
4 any of the following methods:

- 5 (i) For information set forth in any documents or copies of documents  
6 produced to the discovering party voluntarily as a part of mandatory and  
7 ongoing disclosures or under Fed. R. Civ. P. 26, 33(d) or 34, by writing or  
8 stamping the word "Confidential" in plain view on the documents which  
9 allegedly contain such information, and whenever possible, by also  
10 providing a notice in writing to the discovering party that identifies, by  
11 Bates number, the pages that are designated "Confidential";
- 12 (ii) Where a document or response consists of more than one page, each page  
13 containing "Confidential" information shall be so designated. In the  
14 alternative, the entire document may be designated as "Confidential" by  
15 writing or stamping the word "Confidential" in plain view on the cover  
16 page or first page of the document and by annotating that the remaining  
17 pages are "Confidential;"
- 18 (iii) As to testimony taken on behalf of any party or non-party hereto which  
19 involves disclosure of Confidential Information, such testimony may be  
20 designated as "Confidential" if counsel for the witness states on the record  
21 that it is "Confidential" at that time such testimony is given or  
22 immediately thereafter, and/or as otherwise specified in the procedure set  
23 forth in paragraphs 9 and 10 below;
- 24 (iv) If only a portion of a document or portions of the material on a page  
25 qualifies for protection, the producing party must clearly identify the  
26 protected portion(s) (e.g., by making appropriate markings in the margins)  
27 and must specify, for each portion, the level of protection being asserted;
- 28 (v) Confidential Information revealed by inspection of things or premises

1 voluntarily or under Fed. R. Civ. P. 34 shall be designated as  
2 "Confidential" provided that, prior to the inspection, the party permitting  
3 inspection states in writing that its Confidential Information will be  
4 disclosed by the inspection and specifies in writing those parts of the  
5 things or those areas of the premises in which its Confidential Information  
6 will be revealed; and

7 (vi) If the item produced is a tangible object, that tangible object may be  
8 designated as "Confidential" by affixing to the object or its container a  
9 label or tag indicating the object is "Confidential."

10 (b) A party or non-party may designate information produced as "Confidential for  
11 Attorney's Eyes Only" by the same methods as set forth above in paragraph 3 (a) or elsewhere in  
12 paragraph 3, except that the "Confidential" designation shall be replaced with a "Confidential for  
13 Attorney's Eyes Only" designation in the same manner as required thereunder.

14 (c) Each party or non-party that designates information or items for protection under  
15 this Order must take care to limit any such designation to specific material that qualifies under  
16 the appropriate standards. A designating party must take care to designate for protection only  
17 those parts of material, documents, items, or oral or written communications that qualify – so  
18 that other portions of the material, documents, items, or communications for which protection is  
19 not warranted are not swept unjustifiably within the ambit of this Order. Mass, indiscriminate,  
20 or routinized designations are prohibited. Designations that are shown to be clearly unjustified,  
21 or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the  
22 case development process, or to impose unnecessary expenses and burdens on other parties),  
23 expose the designating party to sanctions.

24 (d) A party or non-party that makes original documents or materials available for  
25 inspection voluntarily or under Fed. R. Civ. P. 33(d) or 34 need not designate them for  
26 protection until after the inspecting party has indicated which material it would like copied and  
27 produced. During the inspection and before the designation, all of the material made available  
28 for inspection shall be deemed "Confidential." After the inspecting party has identified the

1 documents it wants copied and produced, the producing party must determine which documents,  
2 or portions thereof, qualify for protection under this Order, then, before producing the specified  
3 documents, the producing party must affix the appropriate "Confidential" or "Confidential for  
4 Attorney's Eyes Only" at the top of each page that contains designated material. If only a portion  
5 or portions of the material on a page qualifies for protection, the producing party also must  
6 clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins)  
7 and must specify, for each portion, the level of protection being asserted.

8       4.     General Limitations on Disclosure: The substance or content of Confidential  
9 Information, as well as all documents or things containing such substance and content, shall not  
10 be transferred or disclosed to anyone other than a Qualified Person and to the parties hereof,  
11 except, however, that information also designated as "Confidential for Attorney's Eyes Only  
12 Information," and the substance thereof, shall not be disclosed to, or discussed with anyone  
13 except the Qualified Persons for Receiving Confidential for Attorney's Eyes Only Information as  
14 specified in paragraph 1(e)(i)-(iv) above. This Order shall not bar any attorney herein in the  
15 course of rendering advice to his client with respect to this action from conveying, in a general  
16 way, to any party client his or her evaluation of "Confidential" or "Confidential for Attorney's  
17 Eyes Only" information produced or exchanged herein, provided, however, that in rendering  
18 such advice and otherwise communicating with his or her client, the attorney shall not disclose  
19 the contents or the factual bases of any "Confidential" or "Confidential for Attorney's Eyes  
20 Only" information produced by another party herein, which disclosure would be contrary to the  
21 terms of this Order.

22       5.     Disclosure and Written Assurance Statements, and Objections to Designation of  
23 Qualified Persons: If a party wishes to propose the designation of any "Qualified Person(s)" as  
24 described in paragraph 1(c)(iii), and (v)-(vi) or paragraph 1(e)(iv), the designating party must  
25 send a Written Assurance Statement, as described in paragraph 5(f), and a written request, as  
26 specified in paragraph 2, to the other parties via facsimile and first class mail or by other means  
27 agreed to by the parties. Proposed experts and consultants must also provide a current  
28 Curriculum Vitae and a list of cases for which the expert has been a consulting or testifying

1 witness. A receiving party may then object to the qualification of such a proposed designated  
2 person in accordance with the following provisions and procedures:

3 (a) Within five (5) business days after receiving a Written Assurance as described in  
4 paragraph 5(f), a party may object to the qualifications of the person to opposing counsel of  
5 record in writing via facsimile and first-class mail, or by other means agreed to by the parties,  
6 and no such objections shall be made unless in good faith and upon reasonable cause for  
7 concern;

8 (b) Even if no objections are made to the designation of such person, no disclosure of  
9 Confidential or Confidential for Attorney's Eyes Only designated information shall be made to  
10 the person prior to five (5) business days after the Written Assurance is received by counsel for  
11 all parties unless waiver of this provision is provided by writing including e-mail;

12 (c) No disclosure of designated items shall be made to an objected to person until the  
13 opposing parties consent or until the Court rules against the objecting party on an appropriate  
14 motion;

15 (d) The parties shall attempt in good faith to resolve the issues relating to the  
16 objection to the designation before involving the Court;

17 (e) If no resolution is reached between the parties, the designating party shall have  
18 ten (10) business days from receiving the written objection from the objecting party to move the  
19 Court for an appropriate order and if it fails to do so, shall not be permitted thereafter to  
20 designate the person as a "Qualified Person" as described in paragraph 1(c)(iii), and (v)-(vi) or  
21 paragraph 1(e)(iv); and

22 (f) A signed and dated Written Assurance statement shall be provided for all persons  
23 a designating party desires to be qualify under paragraphs 1(c)(iii) and (v)-(vi) and 1(e)(iv) in  
24 substantially the following form:

25 "I hereby acknowledge that I, [name], certify my understanding that any information  
26 provided to me is subject to the terms and conditions of the Stipulated Protective Order in Case  
27 No. 3:09-cv-01303-JF(HRL), pending in the United States District Court for the Northern  
28 District of California. Having been given a copy of this Stipulated Protective Order, and having

1 read and understood its contents, I hereby expressly agree to be bound by the terms and  
2 provisions thereof. I will hold in confidence any Confidential Information or Confidential for  
3 Attorney's Eyes Only Information which is disclosed to me and will use it only for purposes set  
4 forth in the Stipulated Protective Order, and will not disclose such information to anyone not  
5 qualified thereunder.

6 My present address is [address]. My present phone number is [phone number]. My  
7 present employer is [employer], where I am a [employment position].

8 As a proposed or retained expert or consultant, I understand that I am to retain all copies  
9 of any of the materials I receive, which have been so designated as Confidential or Confidential  
10 for Attorney's Eyes Only Information, in a container, drawer, cabinet, room, or other safe place  
11 in a manner consistent with the Order, and that all copies are to remain in my custody until I  
12 have completed my assigned or legal duties, at which time I will return or destroy the copies as  
13 specified in the Order. I acknowledge that such return or the subsequent destruction of such  
14 materials shall not relieve me from any of the continuing obligations of confidentiality imposed  
15 upon me by the Order.

16 I hereby submit to the jurisdiction of this Court in this action solely for the purpose of  
17 enforcement of this Stipulation and Protective Order."

18 6. Objecting to the Designation of Confidential Information: Objection by any party  
19 or non-party to the designation of information by another party or non-party as "Confidential" or  
20 "Confidential for Attorney's Eyes Only" (hereinafter referred to collectively as "Confidential  
21 Information" unless otherwise designated) shall be set forth and resolved as follows:

22 (a) If any party objects to the designation of Confidential Information produced and  
23 so designated by designating/producing party, the objecting party will serve a written objection  
24 upon the designating/producing party setting forth its reason for objection.

25 (b) The designating/producing party shall then notify the objecting party in writing of  
26 the factual and legal bases for the asserted designation within five (5) business days after  
27 receiving such written objection from the objecting party.

28 (c) The parties shall then confer in good faith in an effort to informally resolve the

1 validity of the designating/producing party's designation within ten (10) business days after the  
2 objecting party has received the producing party's notice of the bases for the asserted  
3 designation. Counsel for either party can grant an extension of time for this conference period  
4 as mutually agreed upon by counsel for the parties to continue to attempt to resolve the  
5 objection.

6 (d) If the dispute is not so resolved, the designating/producing party as the party  
7 designating Confidential Information shall make an application to the Court by motion under  
8 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) to resolve the  
9 dispute within ten (10) business days after conferring without resolution with the objecting party.

10 The designating/producing party desiring to designate Confidential Information shall have the  
11 burden of establishing the confidentiality or sensitivity of the designated material with the Court.

12 (e) Only upon agreement by the Court with the designating/producing party seeking  
13 to designate Confidential Information and the issuance of an Order from the Court so notifying  
14 the parties of its decision shall the Confidential Information then be appropriately designated as  
15 "Confidential" or "Confidential for Attorney's Eyes Only."

16 (f) The material produced and in dispute shall in all respects be treated as the  
17 appropriately designated Confidential Information from the time of original designation until the  
18 Court has determined the issue of the objecting party's objection to the designation.

19 7. Protection of Confidential Information: Qualified Persons under this Order shall  
20 take reasonable precautions with regard to storage, custody and use of designated items to  
21 prevent the unauthorized or inadvertent disclosure of any protected information. In so doing,  
22 such Qualified Persons shall maintain such information in a secure and safe place, and shall  
23 exercise at least the same degree of care in handling the Confidential Information as is exercised  
24 by the recipient with respect to its own confidential information of a similar nature, but in no  
25 event less than due care. Each designated individual identified as a Qualified Person for  
26 receiving any Confidential Information produced in this action hereby agrees to be subject to the  
27 jurisdiction of this Court solely for the purposes of the implementation and enforcement of this  
28 Order.

8. Filing in the Public Record Confidential Information: Without written permission from the designating party or a court order secured after appropriate notice to all interested persons, a party may not file in the public record in this action any information that has been properly designated and accepted as Confidential Information or Confidential for Attorney's Eye's Only Information. When briefs, memoranda or other documents or things containing Confidential Information or Confidential for Attorney's Eyes Only Information are filed with the Court, the party that seeks to file under seal any Confidential Information must comply with Civil Local Rule 79-5 "Filing Documents Under Seal," which is set forth in its entirety below without Commentary:

(a) Specific Court Order Required. No document may be filed under seal, i.e., closed to inspection by the public, except pursuant to a Court order that authorizes the sealing of the particular document, or portions thereof. A sealing order may issue only upon a request that establishes that the document, or portions thereof, is privileged or protectable as a trade secret or otherwise entitled to protection under the law, [hereinafter referred to as "sealable."] The request must be narrowly tailored to seek sealing only of sealable material, and must conform with Civil L.R. 79-5(b) or (c). A stipulation, or a blanket protective order that allows a party to designate documents as sealable, will not suffice to allow the filing of documents under seal. Ordinarily, more than one copy of a particular document should not be submitted for filing under seal in a case.

(b) Request to File Entire Document Under Seal. Counsel seeking to file an entire document under seal must:

- (1) File and serve an Administrative Motion to File Under Seal, in conformance with Civil L.R. 7-11, accompanied by a declaration establishing that the entire document is sealable;
- (2) Lodge with the Clerk and serve a proposed order sealing the document;
- (3) Lodge with the Clerk and serve the entire document, contained in an 8 ½- inch by 11-inch sealed envelope or other suitable sealed container, with a cover sheet affixed to the envelope or container, setting out the information required by Civil

L.R. 3-4(a) and (b) and prominently displaying the notation: “DOCUMENT SUBMITTED UNDER SEAL”;

(4) Lodge with the Clerk for delivery to the Judge’s chambers a second copy of the entire document, in an identical labeled envelope or container.

(c) Request to File a Portion of a Document Under Seal. If only a portion of a document is sealable, counsel seeking to file that portion of the document under seal must:

(1) File and serve an Administrative Motion to File Under Seal, in conformance with Civil L.R. 7-11, accompanied by a declaration establishing that a portion of the document is sealable;

(2) Lodge with the Clerk and serve a proposed order that is narrowly tailored to seal only the portion of the document which is claimed to be sealable;

(3) Lodge with the Clerk and serve the entire document, contained in an 8 ½-inch by 11-inch sealed envelope or other suitable sealed container, with a cover sheet affixed to the envelope or container, setting out the information required by Civil L.R. 3-4(a) and (b) and prominently displaying the notation: “DOCUMENT SUBMITTED UNDER SEAL.” The sealable portions of the document must be identified by notations or highlighting within the text;

(4) Lodge with the Clerk for delivery to the Judge’s chambers a second copy of the entire document, in an identical labeled envelope or container, with the sealable portions identified;

(5) Lodge with the Clerk and serve a redacted version of the document that can be filed in the public record if the Court grants the sealing order.

(d) Filing a Document Designated Confidential by Another Party. If a party wishes to file a document that has been designated confidential by another party pursuant to a protective order, or if a party wishes to refer in a memorandum or other filing to information so designated by another party, the submitting party must file and serve an Administrative Motion for a sealing order and lodge the document, memorandum or other filing in accordance with this rule. If only a portion of the document, memorandum or other filing is sealable, the submitting party must



1 also lodge with the Court a redacted version of the document, memorandum or other filing to be  
2 placed in the public record if the Court approves the requested sealing order. Within five days  
3 thereafter, the designating party must file with the Court and serve a declaration establishing that  
4 the designated information is sealable, and must lodge and serve a narrowly tailored proposed  
5 sealing order, or must withdraw the designation of confidentiality. If the designating party does  
6 not file its responsive declaration as required by this subsection, the document or proposed filing  
7 will be made part of the public record.

8 (e) Request Denied. If a request to file under seal is denied in part or in full, neither  
9 the lodged document nor any proposed redacted version will be filed. The Clerk will notify the  
10 submitting party, hold the lodged document for three days for the submitting party to retrieve it,  
11 and thereafter, if it is not retrieved, dispose of it. If the request is denied in full, the submitting  
12 party may retain the document and not make it part of the record in the case, or, within 3 days,  
13 re-submit the document for filing in the public record. If the request is denied in part and granted  
14 in part, the party may resubmit the document in a manner that conforms to the Court's order and  
15 this rule.

16 (f) Effect of Seal. Unless otherwise ordered by the Court, any document filed under  
17 seal shall be kept from public inspection, including inspection by attorneys and parties to the  
18 action, during the pendency of the case. Any document filed under seal in a civil case shall be  
19 open to public inspection without further action by the Court 10 years from the date the case is  
20 closed. However, a party that submitted documents that the Court placed under seal in a case  
21 may, upon showing good cause at the conclusion of the case, seek an order that would continue  
22 the seal until a specific date beyond the 10 years provided by this rule. Nothing in this rule is  
23 intended to affect the normal records destruction policy of the United States Courts. The  
24 chambers copy of sealed documents will be disposed of in accordance with the assigned Judge's  
25 discretion. Ordinarily these copies will be recycled, not shredded, unless special arrangements  
26 are made.

27 9. Presenting Confidential Information in Proceedings: Subject to the Court's  
28 procedures, when Confidential Information or Confidential for Attorney's Eyes Only Information

1 is presented, quoted or referenced in any deposition, hearing or other proceeding, counsel for the  
2 offering party shall make arrangements to ensure that only permitted Qualified Persons, under  
3 paragraphs 1(c) and 1(e), are present during such presentation, quotation or reference. To  
4 designate all or any portion of the testimony Confidential or Confidential for Attorney's Eyes  
5 Only, counsel for the witness may enter such a designation on the record and at the time the  
6 testimony is given or immediately thereafter.

7       10.   Transcripts and Confidential Information: Subject to the Court's procedures,  
8 when Confidential Information or Confidential for Attorney's Eyes Only Information is  
9 incorporated in a transcript of a deposition, hearing, trial or other proceeding, the party asserting  
10 that the information or disclosure is Confidential, shall, with the cooperation of all other parties  
11 and/or the court reporter, make arrangements to label such portion "Confidential Information" or  
12 "Confidential for Attorney's Eyes Only Information", and to separately bind such separate  
13 category of information where practicable. All persons shall be enjoined from disclosing the  
14 testimony that has been so designated, except as permitted by this Order. If a designation of  
15 Confidential Information or Confidential Attorney's Eyes Only Information is not made during a  
16 deposition, hearing or trial, and a party determines that additional material contained in the  
17 transcript should have been so designated, a party may so designate the transcript or parts  
18 thereof, within thirty (30) days of the mailing of the transcript, by sending written notice to  
19 opposing counsel and the court reporter of the portions of the transcript that set forth that  
20 Confidential Information. Each party so notified must then cause each copy of the information  
21 in its custody, possession or control to be appropriately marked and bound where practicable.  
22 Until the thirty (30) day period has expired, all deposition testimony and transcripts shall be  
23 treated in their entirety as Confidential Information covered by this Order. If no such written  
24 notice is provided within thirty (30) days of the mailing of the transcript, all previously  
25 undesignated portions of the subject transcript will be deemed to be unprotected under this  
26 Order.

27       11.   Disclosure by Qualified Persons: A Qualified Person under this Order may  
28 disclose items designated as "Confidential" or "Confidential Attorney's Eyes Only" only to

persons personally known to him/her to be authorized under this Order to receive such items. Information obtained by a party inspecting, measuring, analyzing, testing, using, consulting, or otherwise derived from reviewing any item designated under this Order shall be considered as designated and marked according to the highest level of protection of any item reviewed in obtaining that information.

12. Disclosure to Other Persons Not Qualified Persons: Disclosure of Confidential or Confidential for Attorney's Eyes Only Information to a person other than a Qualified Person may occur only upon the prior consent of the party who has produced and designated the information as "Confidential" or "Confidential for Attorney's Eyes Only," or upon the information losing its protected status in accordance with the provisions of this Stipulated Protective Order, or upon order of the Court.

13. A Party's Own Information: Nothing herein shall be deemed to impose any restriction on the use or disclosure by a party of its own documents or information for the purposes of confidentiality under this Protective Order.

14. Duration of Enforceability of This Order and Actions Upon Termination: This Order is valid throughout the course of this action (defined to include all proceedings herein, appeals and/or remands), and shall survive its termination. Not later than ninety (90) days after final termination of this action by judgment, order, settlement or otherwise, from which all **(except those submitted to the Court or made part of the Court's records)** appeals have been exhausted, all copies of documents containing Confidential Information shall be returned to the producing party or destroyed. As an exception to this provision, one archival copy of pleadings, correspondence, work product, discovery responses, depositions, deposition exhibits, Court exhibits and documents included in submissions to the Court may be retained by outside counsel, and one archival set of produced documents may be retained for a period of up to five years from the date of termination by outside counsel for the receiving party for the purpose of any possible future dispute over alleged violation of this Order or over any agreement, decision, decree, order or judgment disposing of all or part of this action.

15. No Waiver of Right to Oppose Production: Nothing in this Order shall be deemed a waiver of any party's rights to oppose production of any information or documents on

1 the grounds of relevance or materiality, or as an attorney-client privileged communication, or as  
2 work product of counsel, or as not reasonably calculated to lead to the discovery of admissible  
3 evidence. If information subject to a claim of attorney-client privilege or work product  
4 immunity is nevertheless inadvertently produced, such production shall in no way prejudice or  
5 otherwise constitute a waiver of, or estoppel as to, any claim of privilege or work product  
6 immunity for such information.

7       16. Inadvertent or Unauthorized Disclosure: If Confidential Information or  
8 Confidential for Attorney's Eyes Only Information is disclosed to anyone other than in a manner  
9 authorized by this Order, or a disclosing party inadvertently produces a document or information  
10 believed in good faith to be privileged or to contain Confidential or Confidential for Attorney's  
11 Eyes Only Information without so designating the document or information, the party  
12 responsible for such disclosure ("inadvertent disclosing party") must expeditiously bring all  
13 pertinent facts relating to such disclosure to the attention of the other parties including the party  
14 that so designated the information, and the inadvertent disclosing party must make every  
15 reasonable effort to retrieve such Confidential or Confidential for Attorney's Eyes Only  
16 Information or privileged documents or information and to prevent further disclosure. Upon  
17 receiving notification of the inadvertently disclosed Confidential Information or privileged  
18 document, all parties will maintain the privileged status or desired confidentiality designation of  
19 the designating party for the inadvertently disclosed documents or information pending final  
20 resolution any objections or challenges to the confidential or privileged designation by the  
21 disclosing party. The inadvertent disclosing party shall notify the other parties in writing or by  
22 making a statement on the record as soon as reasonably possible after the inadvertent or  
23 unauthorized disclosure is discovered, and in any event will do so at least within 15 days of  
24 discovering the inadvertent disclosure. Notification of inadvertent disclosure within 15 days of  
25 discovery shall be presumed to be "expeditiously" for purposes of this paragraph. Following  
26 receipt of such notice, the parties shall return to the inadvertent disclosing party all originals and  
27 copies of any document claimed to contain the Confidential Information or to be privileged, and  
28 shall thereafter treat it as such pursuant to this Order and, other than documents contended to be

1 privileged, the inadvertent disclosing party shall again produce each such document, with the  
2 appropriate "Confidential" or "Confidential for Attorney's Eyes Only" designation, or other  
3 designation as otherwise required by this Order. For privileged documents or information, the  
4 inadvertently producing party that wishes to claim privilege will also serve an amended privilege  
5 log adding the inadvertently disclosed information or documents and the required information  
6 pertaining thereto to enable the other parties to determine the basis for the claim of privilege.  
7 These provisions are subject to the right of any party to seek an order ruling that the document or  
8 information is not privileged or to challenge the designation of inadvertently disclosed  
9 Confidential Information as set forth in paragraph 6 of this Order, and compliance with the  
10 foregoing shall not prevent the inadvertent disclosing party from seeking further relief from the  
11 Court. In the above described instances regarding inadvertent disclosure of privileged  
12 information by the designating party, the inadvertent disclosure shall not be deemed a waiver of  
13 any proper subsequent designation of privilege for the inadvertently produced information,  
14 documents or the subject matter thereof.

15 17. No Admission of Confidential Status: Agreement to this Order is not an  
16 expression of consent or admission as to the actual confidentiality of any material. Should any  
17 party desire to challenge the designation of any material or information as "Confidential  
18 Information" or "Confidential for Attorney's Eyes Only Information," other than as provided in  
19 paragraph 6 above, such party may move the Court for an order changing such designation  
20 and/or releasing the material from the provisions of this Order. The Court, upon notice to the  
21 parties and upon a showing of good cause, may at any time order removal of the "Confidential"  
22 or "Confidential Attorney's Eyes Only" designation from any materials or information, or  
23 otherwise amend this Order. **(See Addendum to Protective Order).**

24 18. Additional Protection and Modifications: Nothing herein shall affect the right of  
25 any party hereto to seek and secure additional protection against the disclosure of Confidential or  
26 Confidential for Attorney's Eyes Only Information. Any party hereto may apply to the Court for  
27 a modification of this Order, with respect to Confidential and/or Confidential for Attorney's Eyes  
28 Only Information, for termination of classified handling of any particular document, or for any

1 other purpose.

2 19. Copies of Notices: In addition to the procedures specifically set forth above, a  
3 copy of any notice or written assurance required by this Order shall be mailed to the attorney of  
4 record in the action for the person or party to whom such notice is directed. In the case of notice  
5 required to be provided to any person (including a non-party) who has not previously made an  
6 appearance in the action, notice may also be provided to the person if copies are also sent to  
7 counsel for the parties.

8 20. Waivers: Any waiver or consent expressly provided for by this Order which is  
9 made in writing or on the record by an attorney of record for any person/party in the action shall  
10 be binding upon such person/party.

11 21. Party Duties as to Qualified Persons: Any party designating any person as a  
12 Qualified Person shall have the duty to reasonably ensure that such person observes the terms of  
13 this Order and shall be jointly responsible upon breach of such duty for the failure of any such  
14 person to observe the terms of the Order.

15 23. Information Received from Non-Parties: Either a party or a nonparty may  
16 designate documents produced in connection with this litigation “Confidential” or “Confidential  
17 for Attorney’s Eyes Only.” The terms of this Order shall be applied to any documents,  
18 information and things received by a party or otherwise produced from any person/entity who is  
19 not a party to this litigation and which are so designated at the election of such non-party  
20 person/entity. Such information so designated by a non-party will be protected by the remedies  
21 and relief provided by this Order and subject to its provisions in the same manner as if  
22 designated by a party.

23 24. Consent to Jurisdiction: Any litigation with respect to this Order shall be  
24 conducted pursuant to the Local Rules of the Northern District of California and subject to the  
25 jurisdiction of the Northern District of California.

26 25. Experts: A testifying expert’s draft reports, notes, outlines, and any other  
27 writings leading up to his final report(s) in this case are exempt from discovery. In addition, all  
28 communications with, and all materials generated by, a testifying expert with respect to his work

on this case are exempt from discovery unless considered by the expert in forming his opinions.  
The expert must produce his final report and all materials that he considered.

26. Retaining the Court's Jurisdiction: For a period of six months after the final termination of this action, this Court will retain jurisdiction to enforce the terms of this Order.

27. Other Court Orders: This Order shall be binding on the parties hereto when signed, and is subject to modification by the Court. Any further Order entered by the Court in this action will supersede the terms of this Order to the extent it is inconsistent herewith.

**IT IS SO STIPULATED.**

DURIE TANGRI LLP

KING & KELLEHER, LLP

By: /s/ Ryan M. Kent  
Ryan M. Kent

By: /s/ Alvin B. Lindsay  
Alvin B. Lindsay

Attorneys for Plaintiff C&C Jewelry Mfg., Inc. Attorneys for Defendant Trent West

Date: October 14, 2009

Date: October 14, 2009

(AS MODIFIED BY THE COURT)  
**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

^

DATED: October 19, 2009

  
\_\_\_\_\_  
Honorable Howard R. Lloyd  
United States Magistrate Judge

**ADDENDUM TO PROTECTIVE ORDER**

C&C Jewelry Mfg., Inc. v. West,  
Case No. C09-01303 JF (HRL)

IT IS HEREBY ORDERED as follows:

Paragraph 17:

A Party that elects to initiate a challenge to a Designating Party's confidentiality designation must do so in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel for the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

A Party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity the justification for the confidentiality designation that was given by the Designating Party in the meet and confer dialogue. The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation.



1 5:09-cv-01303-JF Notice electronically mailed to:

2 Alvin Brock Lindsay alindsay@kingandkelleher.com

3 Daralyn J. Durie ddurie@durietangri.com, records@durietangri.com

4 Edward Vincent King , Jr evking@kingandkelleher.com, alindsay@kingandkelleher.com,  
5 lana@kingandkelleher.com

6 Ryan Marshall Kent rkent@durietangri.com, records@durietangri.com

7 Counsel are responsible for distributing copies of this document to co-counsel who have not  
8 registered for e-filing under the court's CM/ECF program.

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